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8
9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 ANTONIO SANCHEZ-OCHOA,

12 Plaintiff,

13 vs.

14 ED W. CAMPBELL, Director of Yakima
County Department of Corrections;
15 SCOTT HIMES, Chief of the Yakima County
Department of Corrections; and
16 YAKIMA COUNTY.

17 Defendants.

No. 1:17-CV-03124-SMJ

MOTION IN SUPPORT OF
TEMPORARY RESTRAINING
ORDER

7/21/2017

With Oral Argument: 9:30 a.m.
Spokane, WA

18
19 **I. INTRODUCTION AND RELIEF REQUESTED**

20 Plaintiff is in the custody of the Yakima County Department of Corrections
21 (DOC) based on state court charges, but is unable to post bond and be released
22 because of the immigration hold placed on him by Defendants. The only basis for
23 the immigration hold is an Administrative Warrant that provides no authority to

MOTION ISO TRO - 1

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1 Defendants to detain Plaintiff. Plaintiff respectfully requests that this Court enter a
2 temporary restraining order directing Defendants to remove the immigration hold
3 so that he can post bail and be released from the Yakima County Jail.

4 **II. FACTUAL BACKGROUND**

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6 The only basis for Defendants' immigration hold is a Department of
7 Homeland Security (DHS) Warrant for Arrest, Form I-200 (Administrative
8 Warrant). *See Bueno Decl.*, Ex. 1. The Yakima County Jail Roster reports an
9 "Immigration Hold" on Plaintiff and identifies the court as federal, even though
10 there is no proceeding pending against Plaintiff in federal court. *See id.* Ex. 2.

11
12 On July 5, 2017, Plaintiff requested that Yakima County remove the
13 immigration hold on him as the Administrative Warrant provides no independent
14 basis of probable cause and provides no legal authority for any entity other than
15 immigration officers to detain Plaintiff. *Id.* Ex. 3. In a letter dated July 6, 2017,
16 Director Campbell advised Plaintiff's attorneys that Plaintiff "can bail on his ICE
17 hold" but that the Yakima County Jail "do[es] not accept the bail" that Plaintiff
18 may post, because "[i]t must be processed through the Federal courts." *Id.* Ex. 4.

19
20 The bond on Plaintiff's criminal charges is currently set at \$50,000.
21 *Id.* Ex. 2. Even though Plaintiff's family members have sufficient financial
22 resources to pay the amount necessary for a bail bondsperson to post bond for
23

1 Plaintiff, they have been unable to secure those services because of the
2 immigration hold. *Reyes Decl.* ¶¶ 3-6; *see Isquierdo Decl.* ¶ 4 & *Stevens Decl.* ¶ 4.

3 4 **III. ARGUMENT**

5 Plaintiff is entitled to a temporary restraining order requiring Defendants to
6 remove the immigration hold placed on him. The standard for issuing a temporary
7 restraining order is identical to the standard for issuing a preliminary injunction.

8 *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n. 7
9 (9th Cir. 2001). Plaintiff must establish: (1) a likelihood of success on the merits;
10 (2) a likelihood of irreparable harm; (3) that the balance of equities tips in his
11 favor; and (4) that an injunction is in the public interest. *Winter v. Natural Res.*
12 *Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “[A] preliminary injunction is also
13 appropriate when a plaintiff raises ‘serious questions’ as to the merits and ‘the
14 balance of hardships tips sharply in [plaintiff’s] favor,” where the other two
15 elements are also satisfied. *Puente Ariz. v. Arpaio*, 821 F.3d 1098, 1103 n.4 (9th
16 Cir. 2016) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-
17 32 (9th Cir. 2011)).

18 19 20 **A. Plaintiff is Likely to Succeed on the Merits and Alternatively Raises** 21 **Serious Questions as to the Merits.**

22 To demonstrate his entitlement to relief under 42 U.S.C. § 1983, Plaintiff
23 must show: “(1) a violation of rights protected by the Constitution or created by a

1 federal statue, (2) proximately caused (3) by a conduct of a ‘person’ (4) acting
2 under color of state law.” *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

3
4 1. Plaintiff’s Fourth Amendment Rights are being Violated.

5 Plaintiff is likely to succeed on the merits of his § 1983 action because the
6 policy and practice of Yakima County and the individual acts of Defendants
7 Director Campbell and Chief Himes in placing and refusing to remove immigration
8 holds based solely on DHS Administrative Warrants has resulted in Plaintiff’s
9 continued detention without probable cause and without a judicial warrant. This is
10 injuring Plaintiff and violating his rights under the U.S. Constitution.

11 The Fourth Amendment requires both probable cause and a finding by a
12 neutral magistrate to justify the detention of an individual. *See Manuel v. City of*
13 *Joliet*, 137 S. Ct. 911, 918, 197 L.Ed.2d 312, 322 (2017); *Gerstein v. Pugh*,
14 420 U.S. 103, 113-18 (1975); *Coolidge v. New Hampshire*, 403 U.S. 443 (1971)
15 (finding a warrant issued by the Attorney General to be invalid because he was not
16 a neutral magistrate and in charge of prosecution).

17 Here, Yakima County placed an immigration hold on Plaintiff after
18 receiving an I-200 form from DHS. Although the I-200 form states that the
19 immigration officer has probable cause, unlike a judicial warrant, it was issued by
20 the immigration enforcement agency without any review by a neutral judge.

21 *See* 8 C.F.R. § 287.5(e)(2). Similar to the Attorney General who was in charge of
22

1 prosecution in *Coolidge*, immigration enforcement officers are in charge of
2 prosecuting immigration violations and are thus unable to be neutral finders of
3 probable cause. *Coolidge*, 403 U.S. at 453 *see also El Badrawi v. Dep't of*
4 *Homeland Sec.*, 579 F. Supp. 2d 249, 275-76 (D. Conn. 2008) (treating as
5 warrantless an arrest pursuant to an administrative warrant signed by a DHS agent
6 after finding the agent was not a “neutral magistrate (or even a neutral executive
7 official)”).

9 Notably, the I-200 is direct *only* to “immigration officer[s]” authorized by
10 statute to serve immigration warrants , and does not even purport to provide
11 direction or authority to other federal officers, let alone to state, county or other
12 local officials to place an immigration hold or perform any other immigration
13 enforcement activity. *Bueno Decl. Ex. 1*. Thus, Yakima County had no authority to
14 place a hold in the first instance.

16 In addition, the use of Administrative Warrants carries the same deficiencies
17 as those recognized by federal courts with respect to the use of ICE detainers.¹
18

20 ¹ ICE detainers are issued on forms I-247 and I-247a, which unlike the
21 Administrative Warrant, request that other *law enforcement officials* maintain
22 custody of an individual. U.S. Immigration and Customs Enforcement,
23

1 Several courts have found that ICE detainers violate Fourth Amendment
2 protections because they do not furnish probable cause to justify custodial
3 detention. For instance, in *Clackamas County*, the court held the County violated
4 Miranda-Olivares's Fourth Amendment rights by relying only on an ICE detainer
5 to detain her without probable cause—both after she was eligible for pre-trial
6 release upon posting bail and after her release from state charges. *Miranda-*
7 *Olivares v. Clackamas Cnty.*, No. 3:12-cv-02317-ST, 2014 U.S. Dist. LEXIS
8 50340, at *33 (D. Or. Apr. 11, 2014). Prolonged detention, such as full custodial
9 confinement without a warrant, must be based on probable cause. *Id.* at *32. An
10 ICE detainer did not afford the requisite probable cause, rendering Miranda-
11 Olivares's continued detention under it illegal. *Id.* at *33.

14 Similarly, Yakima County is violating Plaintiff's Fourth Amendment rights
15 by detaining him without probable cause when he is eligible for pre-trial release
16 upon posting bail. It makes no legal difference that Plaintiff's detention is based on
17 an Administrative Warrant instead of an ICE detainer. Detention is unlawful in
18 both cases as neither document reflects a finding of probable cause to justify
19 detention.
20

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22 [https://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-](https://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf)
23 [form.pdf](https://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf) (last visited Jul. 17, 2017).

1 In *Orellana*, the court held that Nobles County and the county sheriff
2 violated Orellana's Fourth Amendment rights by prolonging his detention pursuant
3 to an ICE detainer without making the particularized assessment probable cause
4 demands. *Orellana v. Nobles Cnty.*, No. 15-3852 ADM/SER, 2017 U.S. Dist.
5 LEXIS 2438, at *25 (D. Minn. Jan. 6, 2017). Probable cause requires more than
6 the defendant's belief that "[Orellana] was a [noncitizen] subject to removal from
7 the United States" since "it is not a crime for a removable [noncitizen] to remain
8 present in the United States." *Id.* at *23, (quoting *Arizona v. United States*, 567
9 U.S. 387, 132 S. Ct. 2492, 2505, 183 L. Ed. 2d 351 (2012)).
10

11 The language of the I-200 Administrative Warrant is similarly deficient to
12 that of the ICE detainer form in *Miranda-Olivares* and *Orellana*. The ICE officer
13 did not make a particularized assessment that Plaintiff was a flight risk, instead
14 only stating he had probable cause to believe Plaintiff is removable from the
15 United States. Just as important, like the detainer form, the Administrative Warrant
16 is unsupported by a finding of probable cause by a neutral magistrate. Moreover, as
17 previously noted, the Administrative Warrant does not even purport to direct
18 Yakima County officials to take any action. Because Defendants lack a probable
19 cause determination by a neutral magistrate, Plaintiff's ongoing detention based
20 solely on the I-200 form violates Plaintiff's Fourth Amendment rights.
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1 2. Defendants Are Causing the Constitutional Violation under Color of
2 State Law.

3 Defendants are Yakima County and Yakima County DOC staff responsible
4 for administering immigration holds. *Complaint* ¶¶ 24-35. Counties and county
5 officials responsible for policies may be liable for violations under § 1983.
6 *Miranda v. Clark Cnty., Nev.*, 319 F.3d 465, 469-70 (9th Cir. 2003). Defendants
7 Director Campbell and Chief Himes are acting under color of law because their
8 actions are performed while they are acting in the scope of their official duties; the
9 performance of their duties has had the purpose and effect of influencing the
10 behavior of others; and the violation alleged is related in a meaningful way to the
11 performance of their duties. *See Anderson v. Warner*, 451 F.3d 1063, 1068-69 (9th
12 Cir. 2006). Defendants are causing the constitutional violation in three ways. First,
13 Defendants have placed an unlawful immigration hold on Plaintiff – one that is not
14 based on independent probable cause or a judicial warrant. Second, Defendants
15 will not accept bail from the Plaintiff. *See Bueno Decl.*, Ex. 4. Third, Defendants’
16 immigration hold prevents the Plaintiff from obtaining the bond he would
17 otherwise be able to obtain to secure his release on state court charges. *See Bueno*
18 *Decl.* Ex. 2; *Reyes Decl.* ¶¶ 3-6; *Isquierdo Decl.* ¶ 4; *Stevens Decl.* ¶ 4.
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22 **B. Plaintiff is suffering and will continue to suffer immediate and**
23 **irreparable harm if relief is not granted.**

 Plaintiffs seeking preliminary relief must show that irreparable injury is

1 likely in the absence of an injunction. *Winter*, 555 U.S. at 8. “It is well established
2 that the deprivation of constitutional rights unquestionably constitutes irreparable
3 injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v.*
4 *Burns*, 427 U.S. 347, 373 (1976)). Defendants’ policies and practices on the use of
5 immigration holds is causing Plaintiff to continue to be detained in Yakima County
6 DOC custody in violation of his Fourth Amendment rights.

8 What is more, Defendants’ unlawful actions not only deprive Plaintiff of his
9 freedom, but they keep him from being with and supporting his family, including
10 his eight-year-old daughter. *See Reyes Decl.* ¶ 7. Plaintiff has the financial means
11 to be able to post the bond set by the Yakima County Superior Court, provided the
12 immigration hold is removed and the Defendants accept the bond. *Id.* ¶ 6.

14 **C. The balance of hardships and the public interest both support issuance**
15 **of a Temporary Restraining Order.**

16 In balancing the equities, the Court must consider “the competing claims of
17 injury and must consider the effect on each party of the granting or withholding of
18 the requested relief.” *Winter*, 555 U.S. at 24 (internal quotation omitted). Since this
19 case involves the government, the balance-of-equities factor merges with the fourth
20 factor, public interest. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th
21 Cir. 2013).

1 The balance of hardships in this case tips sharply in Plaintiffs' favor.
2 Plaintiff is detained in Yakima County Jail. His trial is currently scheduled for
3 August 7, 2017, but likely to be further delayed. During this time Plaintiff is
4 unlawfully being denied the right to seek pre-trial release, and thus being deprived
5 of his liberty and ability to remain close to his family and friends, including his
6 daughter. In contrast, Defendants do not face any hardship if Plaintiff is released.
7 A Superior Court Judge has already determined that Plaintiff is entitled to release
8 prior to trial upon posting bail.
9

10 The public interest, moreover, is in Plaintiff's favor. Defendants have no
11 interest in ensuring that immigration officials be able to detain Plaintiff on civil
12 violations of immigration law, for their role is not to enforce federal immigration
13 laws. *See Arizona v. United States*, 567 U.S. 387, 407 374, 408-09 (as a general
14 rule, it is not a crime for a removable [noncitizen] to remain present in the United
15 States and Congress did not intend to grant state officials authority to enforce
16 immigration absent specific, limited circumstances). The public, on the other hand,
17 has an interest in preventing the continued violation of Plaintiff's Fourth
18 Amendment rights. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012).
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IV. CONCLUSION

Plaintiff has met the criteria for this Court to grant a temporary restraining order. Accordingly, this Court should enter such an order.

DATED this 18th day of July, 2017.

COLUMBIA LEGAL SERVICES

NORTHWEST IMMIGRANT RIGHTS
PROJECT

s/ Lori Jordan Isley

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of July, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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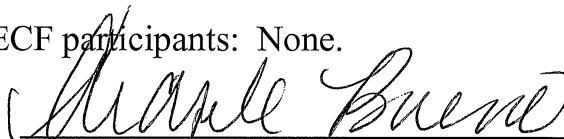
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And I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: None.



Arasele Bueno